



IDAHO DEPARTMENT OF FINANCE
Policy Statement 2012-01

**Application of the Idaho Collection Agency Act to the Collection
Activities of Property Management Companies Operating in Idaho**

I. Background

The Idaho Department of Finance continues to receive inquiries and complaints regarding the activities of Property Management Companies (PMCs) regarding their attempts in Idaho to collect funds, on behalf of their landlord or homeowner association clients, from tenants or homeowners.

II. Idaho Collection Agency Act and the *Davis* Case

The Idaho Collection Agency Act¹ (Act) requires licensure of any person² who engages, either directly or indirectly, in this state in the business of collecting or receiving payment for others of any account, bill, claim or other indebtedness.³ Consistent with the foregoing, it is the Department's position that if a PMC collects or receives payments from tenants or homeowners on behalf of others, licensing is required under the Act, unless the PMC qualifies as a billing-service company within the meaning of a case decided by the Idaho Supreme Court in 1985 entitled, *Davis v. Professional Business Services, Inc.*⁴ (*Davis*).

In the *Davis* case the Idaho Supreme Court determined that an entity was a billing service company rather than a collection agency because:

1. It never sent any mailings or billings in its own name, but rather in the original creditor's name
2. The creditor never assigned any of its accounts to the billing service company
3. The billing service company deposited all the money it received for the creditor into the creditor's bank account
4. The creditor paid the billing service company directly from the creditor's accounts upon signature of one of the creditor's personnel; and
5. When the creditor's accounts were not paid in the regular billing process, the billing service company turned them over to a licensed collection agency for collection.

¹ Idaho Code § 26-2201 *et seq.*

² "Person" is defined as any individual, corporation, association, partnership, limited liability partnership, trust, company, limited liability company, or unincorporated association (Idaho Code § 26-2222(14)).

³ Idaho Code § 26-2223(2)

⁴ 712, P.2d 511 (1985)

III. Department Review Under the Act and *Davis*

In the course of its regulatory responsibilities, the Department is sometimes required to make a determination as to whether a PMC is conducting business in Idaho as a billing service company or as a collection agency. The Department looks to the factors articulated in the *Davis* case in making those determinations. Typically, a billing service company provides an actual billing service during the *regular billing process*, whereas a collection agency typically attempts to collect on accounts outside of the *regular billing process*.⁵ Although a PMC may refer to itself as a *Davis*-type billing service company, if it does not meet the above described elements of a billing service company under *Davis*, the Department will deem it to be a collection agency requiring licensure under the Act.

In the *Davis* case, the original creditor's arrangement with the billing service company presented a seamless appearance to consumers, so that the billing service company appeared in all respects to consumers to be the original creditor. The Department will view a PMC as a *Davis*-type billing service company only insofar as it actually conducts its business like a *Davis*-type billing service company.

IV. Conclusion

If a PMC's business practices mirror the billing service practices articulated in *Davis*, the Department will identify it as a billing service company, for which a license *is not* required under the Act. Conversely, if a PMC's business practices do not mirror the billing service practices articulated in *Davis*, the Department will identify it as a collection agency, for which a license *is* required under the Act.

DATED this ____ day of July, 2012.

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⁵ A primary factor in determining if a collection or receipt on an account has occurred outside of the *regular billing process* is whether a penalty or fee for delinquency is applied to a payment on the account.